

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 691 (Senator Raskin, *et al.*)

Education, Health, and Environmental Affairs

Election Law - Persons Doing Public Business - Independent Expenditures

This bill prohibits a person doing public business from making an independent expenditure for campaign material that supports or opposes a candidate or political party. The bill also amends the definition of “doing public business” under Title 14 of the Election Law Article (“Disclosure by Persons Doing Public Business”) to mean making, during any 12-month period, one or more contracts with one or more governmental entities involving cumulative consideration of *at least* \$5,000, rather than the minimum under current law of at least \$100,000.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: General fund expenditures increase by \$49,900 in FY 2011 to hire a contractual investigator in the Office of the State Prosecutor (OSP) to handle additional complaints. General fund expenditures may also increase for the State Board of Elections (SBE) to manage the expanded scope of the “persons doing public business” filing requirement; however, any increase cannot be reliably estimated. General fund revenues may increase due to criminal/civil penalties from cases heard in District Court.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	-	-	-	-	-
GF Expenditure	\$49,900	\$56,700	\$59,100	\$61,700	\$64,400
Net Effect	(\$49,900)	(\$56,700)	(\$59,100)	(\$61,700)	(\$64,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local government revenues may increase due to criminal penalties from cases heard in the circuit courts.

Small Business Effect: None.

Analysis

Current Law:

Independent Expenditures/Campaign Material

State law does not limit independent expenditures in connection with elections. “Independent expenditure” is defined under the Election Law Article as an expenditure by a person to aid or promote the success or defeat of a candidate if the expenditure is not made in coordination with, or at the request or suggestion of, the candidate, a campaign finance entity of the candidate, or an agent of the candidate.

“Campaign material” is defined as any material that (1) contains text, graphics, or other images; (2) relates to a candidate, a prospective candidate, or the approval or rejection of a question; and (3) is published or distributed. Campaign material includes material transmitted by or appearing on the Internet or other electronic medium and an oral commercial campaign advertisement. Campaign material published or distributed by persons other than a campaign finance entity must include an authority line, set apart from any other message, that states the name and address of the person responsible for the campaign material.

Title 14 of the Election Law Article

Title 14 of the Election Law Article requires a person or entity doing public business to file statements with SBE semi-annually regarding political contributions of over \$500 (or a series of contributions with a cumulative amount of over \$500) made by the person or entity doing public business. “Doing public business” is defined as making, during any 12-month period, one or more contracts with one or more governmental entities involving cumulative consideration of at least \$100,000. Doing public business does not include receiving a salary from a governmental entity. “Governmental entity” means the State, a county, a municipal corporation, or other political subdivision of the State (or a unit of any of those entities).

Statements generally must contain various information, including the name of each candidate to whom an applicable contribution was made during the reporting period, the amount of aggregate contributions made to each candidate, and the name of, and nature and amount of public business done with, each unit of a governmental entity with which the person did public business. Title 14 specifies contributions that are attributable to a business entity for purposes of the filing requirements, including an applicable contribution made by an officer, director, or partner of a business entity (exceptions apply to non-profit organizations). In addition, business done with a governmental entity by a subsidiary of a business entity is attributed to the business entity if 30% or more of the equity of the subsidiary is owned or controlled by the business entity.

A person who knowingly and willfully violates Title 14, or an officer or partner of a business entity who knowingly authorizes or participates in a violation by the business entity is guilty of a misdemeanor and subject to a fine of up to \$1,000 or imprisonment of up to one year.

General Penalties

Except as otherwise provided for specific offenses, a person who knowingly and willfully violates a provision of Title 13 (“Campaign Finance”) of the Election Law Article (within which the bill’s prohibition is included) is guilty of a misdemeanor and on conviction is subject to a fine of up to \$25,000 and/or imprisonment for up to one year. An unknowing violation is subject to a civil penalty of up to \$5,000. The Secretary of State may also seek an immediate injunction against a violation of Title 13.

Background: The U.S. Supreme Court, in *Citizens United v. Federal Election Commission*, recently invalidated federal restrictions on corporate independent expenditures in connection with certain qualified federal elections. The National Conference of State Legislatures (NCSL) indicates that, while not directly affecting state laws, the ruling will have a significant effect on laws governing corporate political activity in nearly half the states, likely causing laws in those states to not be enforced and/or repealed or modified. According to NCSL, there are at least 23 states (not including Maryland) that currently prohibit or restrict corporate and union spending on candidate elections.

State Expenditures:

Office of the State Prosecutor

General fund expenditures increase by \$49,900 in fiscal 2011, which accounts for a 90-day start-up delay. The estimate assumes an increase in campaign finance violations will result from the bill, requiring an additional contractual investigator in OSP. OSP received 271 election law complaints in fiscal 2009 and closed 227 complaints. OSP indicates it currently has one contractual investigator devoting time to election law complaints.

Salary and Fringe Benefits	\$47,908
Operating Expenses	<u>2,000</u>
Total FY 2011 State Expenditures	\$49,908

Future year expenditures reflect a full salary with 4.4% annual increases and 6.8% employee turnover; and 1% annual increases in ongoing operating expenses.

State Board of Elections

General fund expenditures may also increase due to costs associated with administering the filing of contribution statements by a potentially significantly expanded group of persons or entities doing public business. The potential increase in general fund expenditures cannot be reliably estimated, in part due to uncertainty of the extent of persons or entities doing public business (under the bill's revised definition) with government entities in the state and the extent to which those persons or entities would need to file contribution statements. (Under the current definition of "doing public business," SBE advises it receives less than 300 statements for each filing period.) Nonetheless, SBE expects managing the expanded scope of the filing requirement would be a substantial burden that could result in increased costs.

Additional Information

Prior Introductions: None.

Cross File: Although HB 690 (Delegate Cardin, *et al.* – Ways and Means) is designated as a cross file, it is not identical.

Information Source(s): State Board of Elections, State Prosecutor's Office, Judiciary (Administrative Office of the Courts), Attorney General's Office, National Conference of State Legislatures, Department of Legislative Services

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ncs/mwc

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